IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

RICHARD VIETH, et al.,	:	
Plaintiffs	:	
	:	
v.	:	NO. 1:CV-01-
	:	2439
THE COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
Defendants	:	

TRANSCRIPT OF PROCEEDINGS
REAPPORTIONMENT NONJURY TRIAL

VOLUME 1
(Pages 1 through 107.)

BEFORE: HON. RICHARD L. NYGAARD, Judge
HON. WILLIAM H. YOHN, JR., Judge
HON. SYLVIA H. RAMBO, Judge
DATE: March 11, 2002, morning session
PLACE: Courtroom Number Three Federal Building
Harrisburg, Pennsylvania

* * * *

[Direct Examination of Mr. Robert Priest]

BY MR. SMITH:
Q And did you employ a computer in that hunt?
A Yes, I did. The original plan would be drawn on AutoBound. Once I had a common boundary and the list of voting districts on either side of the boundary, I used an Excel spreadsheet to do a massive number of calculations and comparisons that we needed to come up with the zero deviation.
Q Can you give us an example of the number of combinations of precinct moves that you could calculate?
A If I had a common boundary with the fifteen precincts on either side, which is not an uncommon number -- in fact, fairly frequent number -- fifteen precincts would give me then basically 105 combinations of two precincts. So I would have 120 alternatives on either side of the line for populations that could be shifted.
You compare one to the other. You basically are getting close to 14,000 options of precinct movements looking at one and two precinct moves. If you start looking at three and four precinct moves, the number increases geometrically.
Q Once you have generated 14,000 different options, what do you do?
A You hunt for the option that has the difference in population which is the number that your current plan is either high or low from zero deviation.

Q In this process, did you split any precincts?
A No.
Q Have you utilized that same methodology to reduce the population deviation to zero with other maps?
A I have done that twice with other maps.
Q At least in your experience, is that a process that can be applied to any draft district map?
A Easily.
(Gerlach (44th) Senate District in the Sixth Congressional was introduced as Plaintiffs Exhibit 2C.)
BY MR. SMITH:
Q Let me ask you to turn over to Plaintiff Exhibit 2C.
A (Witness complies.)
Q I ask you is this a map that you prepared?
A Yes, it is.
Q It is a little confusing with the three colors. Can you explain what is represented here?
A This is basically a map to show the new Sixth Congressional District in Act 1.
Q Where is the new Sixth Congressional district?
A It is in the southeastern suburban Philadelphia area.
Q Why don't you point it out to us on Act 1 referring to Exhibit 2?
A The Sixth District is there.
Q What does Exhibit 2C show about that district?

A Basically, it takes a look at that district and the 44th Senate District from the last decade to show how much of the old 44th Senate District is embedded in the new Sixth. The colors on this map are basically -- the brown color is the portion of the 44th Senate District that made it into Congressional District 6. The green is the remainder of Congressional District 6, and the yellow is the portion of the 44th Senate District that is not in Congressional District 6.

Q Who is the current Senator from the 44th --

A Senator --

Q You have got to let me finish my question.

A Sorry. Senator Gerlach.

Q And is there an incumbent Congressman who resides in this district, Congressional District 6?

A No, there is not.

MR. SMITH: I move the admission of 2C, Your Honor.

MR. KRILL: I object to it, Your Honor, on the grounds of relevance. I think with this exhibit and the witness's testimony to it, we have departed from any relevance to the remaining issue in this case; namely, the one person-one vote principle.

I think counsel are trying to work their way back to the partisan gerrymandering claims that were dismissed by

the Court.
JUDGE NYGAARD: Your thoughts?
MR. SMITH: Your Honor, we are clearly going to present substantial evidence on partisan gerrymandering because it is directly relevant to the justification that I intend to offer.
JUDGE NYGAARD: Overruled.
MR. KRILL: Your Honor, excuse me. So that I don't disrupt the trial, would the Court grant me a continuing objection on grounds of relevance with respect to that issue?
JUDGE NYGAARD: With respect to -- why don't you tell us which ones you object to? It is not going to be to disruptive. Just jump up, and we will take it that you object.
MR. KRILL: Tell me when I am behaving too much like a jack-in-the-box. I will be happy to.
THE COURT: We are very easy. Just move it along. Let's go.
MR. KRILL: Thank you.
(Murphy (37th) Senate District in the 18th Congressional was introduced as Plaintiffs Exhibit 2D.)
BY MR. SMITH:
Q Let me ask you, Mr. Priest, to turn it over to Exhibit 2D.

A Yes.
Q Is this a map you prepared?
A Yes, it is.
Q And what does it represent?
A This is the 18th Congressional District in southwestern Pennsylvania. And it shows the embedded 37th -- 1990's 37 Senate District which was the district of Senator Murphy which is entirely contained within the 18th Congressional.
Q Just for some context here, the 37th District is located where in relation to the City of Pittsburgh?
A The City of Pittsburgh is the large white area directly north of the brown on this map.
Q Senator Gerlach and Senator Murphy are from which party?
A Republican.
MR. SMITH: I move the admission of 2D, Your Honor.

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[Cross Examination of Dr. John Memmi]

BY MR. SMITH:
Q Good morning, Dr. Memmi.
A Good morning, Mr. Smith.
Q Paul Smith. Do you have any prior experience with redistricting prior to this decennial census, this round of redistricting?
A No, sir. This is my initial foray into the redistricting jungle.
Q You said I believe that you are not part of the political leadership that was making decisions with how the maps would be drawn; true?
A Is that a question?
Q Yes. Did you say that?
A I did say that. I am not a member of-- I am an executive with the team. And I mean that in pure sense of the word. I will explain what I mean by that. In the pure sense of the word, people tell me -- my supervisors tell me what to do, and I do it.

Q And, therefore, you don't have any knowledge of the reasons why particular districts took on the configurations that they took on in Act 1; is that right?
A As I said, I follow the directions of my supervisors, and I do what they say. I have no input into whether a given district looked like a circle or a square or a stripe or anything else.
Q So you wouldn't be able to tell the Court why somebody decided in District 6 to go from Lower Merion up to part of the City of Reading in one district; would you?
A No.
Q Now you presented --
A May I clarify that answer?
Q Please.
A Not with a responsible basis for doing so.
Q Are you saying you might have heard something in the hallway?
A We all hear all sorts of things. But my job, again, is to follow the instructions of my supervisors and to do what they ask me to do. And that is what I do.
Q You presented some statistics about the population deviations in various plans that were presented as proposals in the General Assembly last December. Do you recall that testimony?
A Yes. Could you speak up a little louder? I don't hear

very well.
Q I am doing my best. I will try to speak louder.
A Thank you very much. I appreciate that. Would you please reask your question?
Q I was just trying to recall your testimony regarding the population deviations of the various plans that were presented to the Legislature in December.
Do you recall that testimony?
A Yes, I presented testimony on five plans that made their way to the floors of the Chambers of the State Legislature.
Q One of those plans was a DeWeese Plan. You labeled it DeWeese Proposal?
A Yes, sir.
Q And that was a proposal 4848; is that correct?
A Yes, sir.
Q And you didn't present any statistics on the population deviations in Mr. DeWeese's other proposed Amendment 4849; is that right?
A That is correct.
Q Do you know what the population deviations in that proposal were?
A I do not, sir.
Q Let me ask you to turn to Defendant Exhibit 8 which is the Senate passed plan of last December.

MR. SMITH: I believe that is in Binder One, Your Honor?
A I need that binder, please
BY MR. SMITH:
Q It is Exhibit 8.
A Yes, sir. Thank you. Just give me a moment, please.
Q You mentioned in your testimony that the black dots represent the residences of incumbents in the plan; is that right?
A That's correct.
Q And in this plan that was passed by the State Senate in December, there are four districts that contain two incumbents in them; is that right?
A I would like to go back and count them, but I trust from your judgment.
Q Let's go through them and look at them. First, there is District 14 in the Pittsburgh area that contains both Mr. Coyne's residence and Mr. Doyle's residence?
A Yes.
Q Then there was District 12 in the southwestern part of the state?
A Yes.
Q That contains both Murtha and Mascara?
A That's right. Representative Mascara's is right along the border of Washington County. It is difficult to see, but

Page 319

you are correct.
Q There is District 6 in the eastern portion of the state that contains both Mr. Holden and Mr. Kanjorski's district?
A Correct, sir.
Q There is proposed District 13 which contains both Mr. Hoeffel and Mr. Borski's; is that right?
A You are right there.
Q Those are all Democratic Representatives?
A They are, sir.
Q There were no other pairings anywhere in this plan?
A That's correct. Just for clarification, I had no input on those pairings or anything else of a political nature.
Q Thank you for that clarification. Now let's look at -- let's turn then to your New Years' Eve process of reducing the population deviations in what became Act 1.

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[Cross Examination of Dr. John Memmi]

Page 327

Q So you are saying it is more complicated and difficult to work with census blocks because there are so many more of them?

Page 328

A No. I am saying they are easier to work with because there are more choices, the population increments are smaller. In this Commonwealth we in fact have census -- I am sorry we have precincts that range in population from zero, zero to upwards of 6,000.
Again let me repeat that. From zero to upwards of 6,000. It might be 5800, but it is at least 5,000. And that is a daunting task when you are trying to move things around with time constraints.
Q Did you hear Mr. Priest's testimony if he had fifteen precincts along one side of a boundary and fifteen precincts along the other side of the boundary, he could generate 14,000 options of precinct switches that would potentially produce an ideal population?
A I did hear Mr. Priest testify to that. On the face of it -- because I haven't done it myself, on the face of it, his approach makes sense to me as a scientist. I haven't tested it.
Q Now what you did instead was to move very, very small numbers of people at times. It is true, for example, isn't it, that there are census blocks that have two, three or four residences in them?
A There are plenty of empty census blocks. There are census blocks that have two, three or four people in them. There are census blocks that have -- if you go to my sheet,

Page 329

the handwritten sheet, one gets a sample of population sizes in census blocks. So there can be as many as a hundred. Census block population size is variable.

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